

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FELIX L. SANTIAGO	:	CIVIL ACTION
	:	
v.	:	
	:	
KENNETH S. APFEL,	:	
Commissioner of	:	
Social Security	:	NO. 97-3640

MEMORANDUM AND ORDER

BECHTLE, J. AUGUST , 1998

Presently before the court in this action for social security benefits is Kenneth S. Apfel, Commissioner of Social Security's (the "Commissioner") objections to the magistrate judge's Report and Recommendation ("R & R") and Felix L. Santiago's ("Santiago") response thereto. For the following reasons, the court will not approve and adopt the Report and Recommendation and will grant the Commissioner's motion for summary judgment.

I. BACKGROUND

On March 29, 1993, Santiago applied for Social Security Income benefits ("SSI") under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381, et seq., and Title II "DIB" benefits,¹ claiming that he had become disabled as of September 30, 1991,

1. The Title II claim has been withdrawn from the appeal and therefore the court will not consider it.

due to "hypertension, hypercholesterol, coronary artery disease, abdominal pain and arthritis." (R & R at 3.) On July 6, 1993, the application was denied. On December 14, 1993, upon reconsideration, the application was again denied.

On February 1, 1994, Santiago filed a request for a hearing. On August 1, 1995, a hearing was held before an administrative law judge ("ALJ"). Santiago was present with an interpreter. On November 6, 1995, the ALJ denied Santiago's request for benefits. Santiago requested review with the Appeals Council. On March 20, 1997, the Appeals Council denied his request for review. The ALJ's decision is therefore the Commissioner's final decision. On May 23, 1997, Santiago filed this civil action seeking judicial review of the Commissioner's decision. Both parties filed motions for summary judgment.

The court referred the case to United States Magistrate Judge Faith Angell, who issued a Report and Recommendation on January 20, 1998, recommending that the court deny the Commissioner's motion and grant Santiago's motion. On February 2, 1998, the Commissioner filed objections to the Report and Recommendation and shortly thereafter, Santiago filed a response.

II. LEGAL STANDARD

Judicial review of administrative decisions is limited. The court may not re-weigh the evidence. Monsour Med. Ctr. v.

Heckler, 806 F.2d 1185, 1190 (3d Cir. 1986), cert denied, 482 U.S. 905 (1987). The court determines only whether the Commissioner's decision is supported by substantial evidence. 42 U.S.C. § 405(g); Richardson v. Perales, 402 U.S. 389, 401 (1971). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Pierce v. Underwood, 487 U.S. 552, 564-65 (1988). If the decision is supported by substantial evidence, the court must affirm the decision regardless of whether it would have come to a different conclusion. Id. The court reviews de novo the portions of the Report and Recommendation to which objections are filed. 28 U.S.C. § 636(b)(1)(C).

III. DISCUSSION

Santiago has exhausted all administrative remedies and has complied with the applicable filing deadlines. The court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 405(g).

Santiago was born on April 10, 1936, in Puerto Rico. He was 57 years of age at the time of filing. Santiago has a high school equivalency diploma from Puerto Rico and speaks English with difficulty. His prior work history includes employment as a packer and machine operator until 1986 when the plant at which he

worked closed. The job was considered unskilled and required him to stand while working.

Santiago's relevant medical history, beginning in 1992, includes gastric and cardiac complaints as well as abdominal pain. His record also refers to sinus ailments, onychotic nails, decreased hearing and generalized anxiety disorder with primary insomnia for which he received medication and counseling. He also complained of left knee pain and was diagnosed with osteoarthritis.² Treatment for that illness included injections and oral medication.

The Commissioner has established a five-step test for determining whether a person is disabled under the Social Security Act. 20 C.F.R. §§ 404.1520. Under this test, the claimant must first show that he or she is not engaged in substantial gainful activity. Next, the claimant must show that he or she suffers from a severe medical impairment. If these two are shown, the third step requires a comparison of medical evidence of the impairment with a list of impairments presumed severe enough to preclude gainful employment. 20 C.F.R., part 404, subpart P, Appx. 1 (Part A).³ If the impairment matches or

2. Osteoarthritis is a non-inflammatory degenerative disease characterized by the degeneration of cartilage between joints. Dorland's Illus. Med. Dict., W.B. Saunders & Co. 1994 at 1198.

3. A finding of disability can not be based solely on subjective symptomology. There must be medical evidence and
(continued...)

is equal to one of the listed impairments, the claimant qualifies for benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d). If the claimant does not qualify at this step, the analysis proceeds to the fourth step at which the inquiry is whether the claimant can perform his or her past work. If the Commissioner finds that the claimant can perform his or her past work, the Commissioner will find that the claimant is not disabled and not entitled to benefits. In that case, the inquiry ends. However, if the Commissioner finds that the claimant cannot perform his past work, the fifth step is considered. At the fifth step, the Commissioner must determine whether the claimant can perform some other job. If the Commissioner determines that the claimant can perform some other job, the burden shifts to the Commissioner to show that there is work which the claimant is qualified to perform in the national economy in light of the claimant's age, education and work experience. 20 C.F.R. §§ 404.1520(e)-(f) and 20 C.F.R. § 416.920.(e)-(f).

In this case, under the first step, the ALJ found that Santiago had not engaged in substantial gainful employment since his onset date. Under the second step, the ALJ found that Santiago had severe impairments, including "hypertension, minimal

(...continued)
laboratory tests showing that the claimant has a medical impairment that could reasonably produce the symptoms. 20 C.F.R. § 416.929(a).

generative joint disease of the left knee and generalized anxiety disorder."⁴ Under the third step, the ALJ found that these ailments alone or in combination did not match or equal the CFR's listed impairments. Under the fourth step, the ALJ determined that Santiago was not entitled to benefits because he could perform his prior relevant work as a packer and machine worker at the light or moderate level without limitation. (Dec. at 4; R. 21-31; R & R at 7.) The ALJ found that Santiago's job required standing, operating a machine and lifting weight of less than ten pounds. (R. 77-79.) Because the ALJ found that Santiago could perform his former job, he did not consider the fifth step.

The magistrate judge recommended that the court overturn the ALJ's decision because the record does not include evidence that Santiago can stand or walk more than six hours per day. The magistrate judge relies upon the fact that Santiago was diagnosed with osteoarthritis and that Santiago's described lifestyle is sedentary. (R & R at 7.) The magistrate judge then considered the fifth step and found that Santiago qualified for benefits because "a sedentary residual functional capacity by an

4. Under the statute, in order to find arthritis that qualifies, there must be a finding of a history of persistent joint pain, swelling and tenderness involving multiple major joints with signs of joint inflammation resulting in significant restriction of function of the affected joints and corroboration by positive serologic test for rheumatoid factor; or antinuclear antibodies; or elevated sedimentation rate; or characteristic histologic changes in biopsy of synovial membrane or subcutaneous nodule. 20 C.F.R. § 1540. Appx.1 Sub. P 1.02-1.03.

individual of advanced age, with limited education, illiteracy in English and unskilled work history directs a finding of disabled on the Grid." (R & R at 8.)

The Commissioner objects to the magistrate judge's finding based on Santiago's osteoarthritis and argues that the evidence does not support a finding of functional limitations. The Commissioner contends that because there was no evidence to support the finding of a functional limitation, the ALJ was justified in finding that Santiago could stand for a sufficient period of time to perform his former job. (Obj. to R & R at 2.) The Commissioner also objects to the magistrate judge's reliance upon Santiago's other medical complaints in combination with his osteoarthritis. The Commissioner argues that the record does not show that Santiago has a condition that could cause the chest pains of which he complains. Santiago has no heart disease, his hypertension is stable and his gastric complaint is controlled by medication. (Obj. to R & R at 3-4.) Lastly, the Commissioner argues that the magistrate judge was beyond the scope of her review in finding that Santiago is disabled under the medical-vocational guidelines for sedentary work.

It is the ALJ's responsibility to resolve conflicts in the evidence and to determine credibility and the relative weight to be accorded the evidence. Richardson, 402 U.S. at 401. Upon appeal to this court, the Commissioner's factual determinations,

if supported by substantial evidence, shall be conclusive both as to those determinations and inferences reasonably drawn from those determinations. Cotter v. Harris, 650 F.2d 481 (3d Cir. 1981). In order to consider subjective medical complaints, there must be substantiating medical evidence and the claimant must show that he has a condition which could reasonably be expected to cause the symptoms of which he complains. Williams v. Sullivan, 970 F.2d 1178, 1186 (3d Cir. 1992). Further, while the district court may remand the case for further findings of fact, it may not make findings of its own. Grant v. Shalala, 989 F.2d 1332, 1338 (3d Cir. 1993).

The record upon which the Commissioner and the ALJ relied included clinical tests that did not show any heart disease (Dec. at 1; Exs. 18, 22); clinical tests that show only a slight decrease in knee function with normal station and gait (Dec. at 2; Exs. 26, 34, 35); and clinical tests showing that Santiago's stomach complaints were due to gastritis that could be controlled by medicine. (Dec. at 2; Ex. 26). The evidence before the ALJ also included Dr Finch's report stating that Santiago had no established exertional limitations (R. 104); Dr. Myer's report stating that Santiago could stand and/or walk for about 6 hours in a 8 hour work day (R. 114); Dr. Greenspan's report that Santiago had no impairment that prevented him from standing or walking; Dr. Mellor's report finding that Santiago had

osteoarthritis and recommending "well cushioned shoes, weight loss, and range of motion exercises" as treatment (R. 254); Dr. Patel's report finding that Santiago had mild osteoarthritis with a small cyst formation (R. 274); Dr. Mellar's report stating that x-rays of Santiago's knee showed that the range was within normal limits, and finding that Santiago was "persistently symptomatic for osteoarthritis without any mechanical symptoms." (R. 290-91). The ALJ also relied upon Santiago's description of his life that showed he led a fairly normal lifestyle. (Dec. at 3.) The ALJ found that Santiago's subjective complaints were not supported by the clinical evidence. (Dec. at 4-5.)

There is substantial evidence in the record to support the ALJ's findings. Under the applicable law, the court must defer to the factual findings of the Commissioner and the ALJ. The court will not adopt the magistrate judge's Report and Recommendation.

There are no genuine issues of material fact and the Commissioner has shown that he is entitled to judgment as a matter of law. The court will grant the Commissioner's motion and deny Santiago's motion.

IV. CONCLUSION

For the above reasons, the court will not approve and adopt the magistrate judge's Report and Recommendation, the court will

grant the Commissioner's motion for summary judgment and deny Santiago's motion for summary judgment.

An appropriate Order follows.

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KENNETH S. APFEL,	:	
Commissioner of	:	
Social Security	:	NO. 97-3640

ORDER

AND NOW, TO WIT, this day of August, 1998, upon consideration of the parties' cross-motions for summary judgment, and the responses thereto, the magistrate judge's Report and Recommendation and objections thereto, IT IS ORDERED that the magistrate judge's Report and Recommendation is not adopted, Commissioner Kenneth S. Apfel's motion for summary judgment is GRANTED and Felix L. Santiago's motion for summary judgment is DENIED.

Judgment is entered in favor of Commissioner Kenneth S. Apfel and against Felix L. Santiago.

LOUIS C. BECHTLE, J.